STATE OF CALIFORNIA PETE WILSON, Governor

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

September 9, 1994

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20036

Re: CC Docket No. 94-54
RM-8012

Dear Mr. Caton:

Please find enclosed for filing an original plus eleven copies of the COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA in the above-referenced docket.

Also enclosed is an additional copy of this document. Please file-stamp this copy and return it to me in the enclosed, self-addressed, postage pre-paid envelope.

Very truly yours,

Ellen S. LeVine
Attorney for California

ESL:lkw

Enclosures

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services	)	CC Docket No. 94-54 RM-8012

COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

The People of the State of California and the Public Utilities Commission of the State of California ("CPUC") hereby submit these comments in the above-docketed proceeding.

In its Notice of Proposed Rulemaking ("NPRM") and Notice of Inquiry ("NOI"), the Federal Communications Commission ("FCC") tentatively concludes that equal access obligations should be imposed on all cellular licensees, and seeks comment on whether these obligations should likewise be imposed on all providers of commercial mobile radio services ("CMRS").

The FCC also invites comment on whether to require local exchange carriers ("LECs") to offer interconnection to CMRS providers under tariff in lieu of continued reliance on contractual negotiations.

Lastly, in its NOI, the FCC seeks comment on how best to foster interconnection among CMR services. Among other things, the FCC wishes to examine whether CMRS providers should offer interconnection to switch-based resellers of CMRS. The FCC also

asks whether it should preempt state regulation of interconnection arrangements provided by CMRS providers, including cases where federal interconnection arrangements are not prescribed.

The CPUC addresses each of these areas of inquiry below.

I. THE FCC SHOULD IMPOSE EQUAL ACCESS OBLIGATIONS ON CELLULAR CARRIERS AND THEIR COMPETITORS

The CPUC agrees with the FCC's tentative conclusion to impose equal access obligations on cellular carriers. The CPUC also advocates similar requirements for all CMRS carriers, as we indicated in our previous Comments in GN Docket No. 93-252. (See California PUC Comments in GN Docket No. 93-252 at 11).

Equal access will enhance consumer choice by allowing CMRS consumers to select which interexchange carrier will provide them interexchange service. This choice in turn should result in lower toll rates as carriers compete to offer interexchange service to cellular consumers.

All CMRS providers should be required to offer equal access in order to ensure a level competitive playing field among mobile service providers and between mobile service providers and LECs. Moreover, to the extent that personal communication systems ("PCS") evolve as an alternative to landline services, they should have the same equal access obligations as LECs.

The costs for implementing equal access should be minimal for cellular carriers and other CMRS providers. As the FCC tentatively concluded, meeting equal access requirements will be technically feasible with a software upgrade to the MTSO. NOI at

¶76. Other wireless telephone providers at an earlier stage of development, such as PCS, can design systems with equal access obligations in mind.

The CPUC also agrees with the New York Commission that simple notification to consumers that they may choose their own interexchange carrier is sufficient in lieu of balloting.

II. THE FCC SHOULD REQUIRE INTERSTATE INTERCONNECTION TARIFFS

The CPUC requires LECs to file tariffs for wireless interconnection. The CPUC recently established this requirement by granting a petition by California's largest LEC, Pacific Bell. (Decision ("D.") 94-04-085). The CPUC's rationale for adopting this policy for interconnection is also relevant for interconnection for the purpose of completing interstate calls.

Specifically, in anticipation of entry by new CMRS providers, the CPUC found that interconnection arrangements should be transparent to end-users and available to all providers on uniform terms. (Finding of Fact ("FOF") 8). Second, an interconnection tariff will reduce the likelihood that a new entrant into the wireless market will be at a disadvantage when negotiating interconnection arrangements with an LEC. (FOF 9). Third, interconnection tariffs will reduce the opportunity for LECs to favor their affiliates in the wireless market. (FOF 10). Finally, interconnection tariffs do not preclude cellular or other wireless carriers from negotiating an individualized interconnection agreement with the LECs when justified by cost. (Ordering Paragraph 4).

The CPUC believes that similar wireless interconnection tariffing policies are appropriate for interconnection for the purpose of completing interstate calls.

III. THE FCC SHOULD PROMOTE SWITCH-BASED RESELLERS IN ORDER TO STIMULATE COMPETITION IN THE CELLULAR INDUSTRY

In its NOI, the FCC asks for comment on "whether we should establish any interstate interconnection obligations applicable to CMRS resellers." NOI at ¶128. The CPUC believes that switch-based resellers can provide a competitive alternative to facilities-based carriers, particularly prior to the introduction of facilities-based substitutes for cellular. In order to become a competitive alternative, switch-based resellers must be able to isolate charges for monopoly bottleneck services they must acquire from facilities-based carriers from services which they can acquire elsewhere or produce themselves.

To achieve this end, the CPUC recently ordered cellular carriers to unbundle wholesale cellular rates which currently bundle charges for monopoly airtime services with competitive services, such as LEC interconnection and acquisition of NXX codes. (D.94-08-022). To the extent that CMRS resellers offer interstate services, the FCC should mandate interconnection by cellular carriers to resellers and require similar unbundling of any cellular bottleneck services. Such action would be consistent with federal policy to foster competitive alternatives to existing services, to the ultimate benefit of consumers.

The FCC also asks "whether it would be appropriate to require CMRS resellers that employ their own switch to offer

interconnection to other CMRS providers or other customers." NOI at ¶128. The CPUC believes that interconnection obligations for switch-based resellers is desirable but would not be necessary since they do not control bottleneck functions, such as airtime, as the facilities-based carriers currently do.

IV. THE FCC SHOULD NOT PREEMPT STATE AUTHORITY TO REQUIRE CMRS INTERCONNECTION OR TO PRESCRIBE INTRASTATE INTERCONNECTION RATES

In its NOI, the FCC found "that a strong resale market for cellular service fosters competition." NOI at ¶138. Toward that end, as discussed above, the CPUC has ordered cellular carriers to interconnect a reseller switch to a cellular carrier's MTSO upon a bona fide request therefor, and to unbundle the radio transmission bottleneck from other service functions in order to enable switch-based resellers to purchase competitive services currently bundled with non-competitive services from another provider.[1] As the CPUC explained, such unbundling is an interim measure to stimulate additional competition by cellular resellers in the currently uncompetitive cellular markets in California until PCS and enhanced specialized mobile ratio ("ESMR") services become widely deployed and available as a substitute for cellular services.

In its NOI, the FCC invites comment on whether it should preempt the states from imposing any interconnection obligations

1. The CPUC has not mandated any special technical requirements for interconnection between reseller and cellular carriers, but has left such matters to negotiation.

on CMRS providers, and in particular, in those cases where the FCC has imposed no federal obligations. NOI at ¶143. The CPUC submits that such preemption is unwarranted. The CPUC's unbundling order is fully consistent with federal policy to promote a strong resale market for intrastate cellular services in order to foster competition in intrastate markets. It is further consistent with well-established federal policy to encourage new competitive entrants, new competitive services, and enhance consumer choice.

Moreover, as explained in our comments in GN Docket No. 93-252, In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, state interconnection arrangements, such as the one recently adopted by the CPUC, are consistent with Congress' recognition that "interconnection serves to enhance competition and advance a seamless national network." House Report No. 103-111 at p.261. They are further consistent with congressional intent not to preclude states from prescribing terms and conditions, other than entry and rates charged to the subscribers of mobile services, governing the provision of such services. Id.

Accordingly, to the extent that states like California adopt unbundling and interconnection arrangements that further federal policy, they should be encouraged, not preempted. The CPUC thus urges the FCC not to preempt all interconnection arrangements between mobile service providers.

With respect to rates, the FCC reiterates its belief that the Omnibus Budget Reconciliation Act ("Budget Act") preempts the states from prescribing intrastate interconnection rates. In its

comments in GN Docket No. 93-252, and in reply to petitions for reconsideration of the CMRS Second Report, 9 FCC Rcd 1411 (1994), the CPUC has respectfully disagreed with the FCC. Among other things, the CPUC pointed to the legislative history of the Budget Act indicating Congress' intent only to preempt state authority over rates charged for services rendered to the subscriber of mobile services so long as state regulation was not necessary to ensure just, reasonable and nondiscriminatory rates for such subscribers. Congress, however, expressed no intent to preempt the states from continuing to set interconnection rates for access services, including rates for access by competitors to the unbundled bottleneck facilities of cellular carriers.

In any event, the CPUC has petitioned to retain state regulatory authority over all cellular service rates, including those governing interconnection between a switch-based reseller and a cellular carrier.[2] As explained in our petition, in order to stimulate additional competition for cellular services. "[r]etention of state authority over the rates charged by cellular carriers for unbundled bottleneck services, at least on an interim basis, is essential in order to ensure that the pricing of such services does not effectively eliminate the cost savings which would otherwise by achievable by switch-based

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2. Petition of the People of the State of California and the Public Utilities Commission of the State of California to Retain State Regulatory Authority Over Intrastate Cellular Service Rates, GN Docket No. 93-252, In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services (August 8, 1994).

resellers." CPUC Petition at iii.[3]

V. CONCLUSION

For the reasons stated, the CPUC urges the following: (1) the FCC should impose equal access obligations on all cellular carriers and competing wireless providers; (2) the FCC should require interconnection tariffs for interstate purposes; (3) the FCC should promote competition in the cellular industry by allowing interconnection by switch-based resellers and requiring

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3. In its NOI, the FCC reiterated that "because cellular carriers were primarily engaged in the provision of 'local, intrastate exchange telephone service, the compensation arrangements among cellular carriers and local telephone companies are largely a matter of state, not federal, concern.'" NOI at ¶108. The FCC further stated that such compensation arrangements were "properly the subject of negotiations between the carriers as well as state regulatory jurisdiction. (sic)." Id.

The same reasoning supports state action designed to ensure that cellular carriers price non-competitive unbundled bottleneck services in a manner which does not defeat the ability of switch-based cellular resellers to compete with cellular carriers in intrastate markets.

unbundling of competitive and monopoly bottleneck services; and (4) the FCC should not preempt state authority to require CMRS interconnection or to prescribe intrastate interconnection rates.

Respectfully submitted,

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By: 

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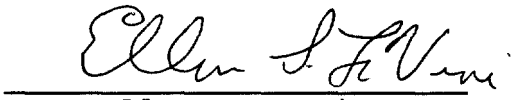
September 9, 1994

CERTIFICATE OF SERVICE

I, Ellen S. LeVine, hereby certify that on this 9th day of September, 1994 a true and correct copy of the foregoing COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA was mailed first class, postage prepaid to all known parties of record.



Ellen S. LeVine

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